

REMARKS

Claims 1-34 are currently pending. Claims 35-79 were previously canceled without prejudice. However, Applicant reserves the right to pursue the subject matter of the canceled claims by separate prosecution of this or another related application. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

Claim Rejections Under 35 U.S.C. 103(a)

In the Final Office Action dated July 19, 2006, the Examiner rejected claims 1-8, 11-14, 17-32, 34-38, 40, 64-67, 69-75, and 77-79 under 32 U.S.C. § 103(a) as allegedly being obvious in view of Oman (US Patent Number 2,001,810) in combination with Buchalski (US Patent No. 5,816,484). The Examiner also rejected claims 9, 10, 33, 39, 68 and 76 as being obvious further in view of Suh (US Patent No. 5,106,882). Applicant respectfully traverses these rejections.

Independent claims 1, 15, and 29 recite, *inter alia*, a rim encompassing and projecting laterally outwardly from a continuous body portion, and a number of flaps integrally connected to the rim along respective fold lines. The Examiner interprets the step (89), as depicted in Figure 8 of Bulchalski, to be a “rim” and the living hinge (120a, 122a, 124a, 126a) to be a “fold line”. However, according to this and any other reasonable interpretation, the flaps of Bulchalski can not be integrally connected to a laterally and outwardly projecting rim (step 89) along a fold line (living hinge 120a, 122a, 124a, 126a) as claimed. Instead, the step (89) of Buchalski is vertically spaced from the living hinge and therefore not integrally connected to the flaps (90’, 92’, 94’, 96’) as asserted by the Examiner.

For the convenience of the Examiner, and in an attempt to depict more clearly the container disclosed by Buchalski, Applicant reproduces Fig. 8 of Buchalski below. Also provided is a cross sectional schematic view, in accordance with the Buchalski disclosure, which illustrates two stacked containers of Buchalski, with the inner nested container being shown in phantom.

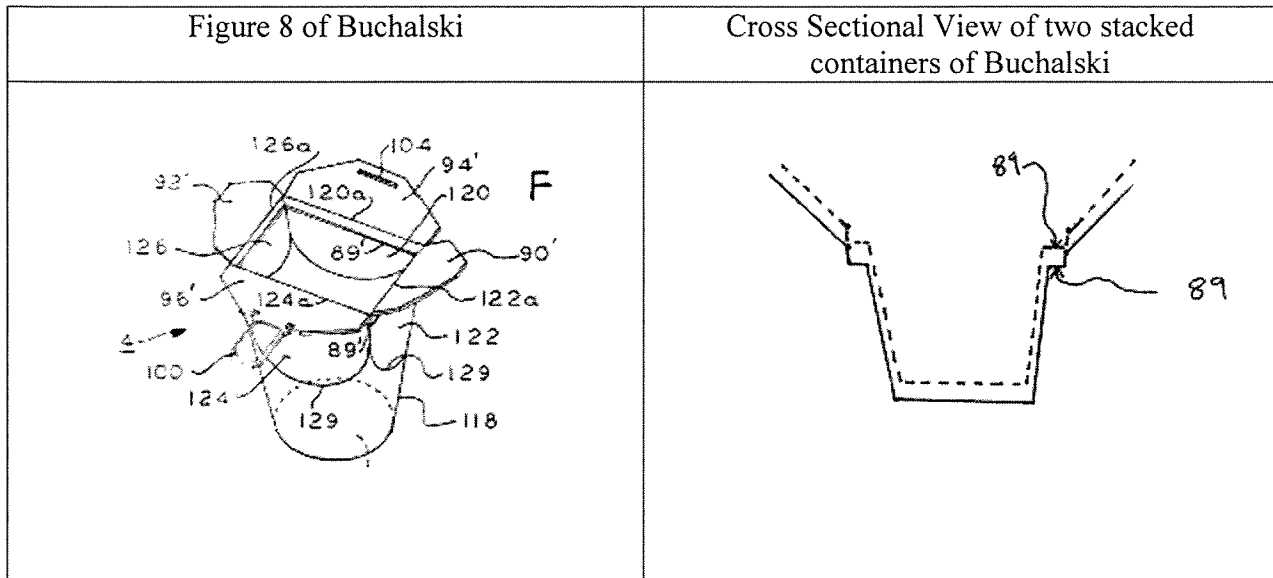


Figure 8 clearly depicts the step (89) spaced vertically from the corresponding hinge wherein the living hinge (120a) is shown spaced from and at a vertically higher location than step (89). Further, Buchalski explicitly states in column 5, line 35, that “the step 89 is present on the interior and exterior surfaces of the sidewalls” (emphasis added). Thus, and as best understood by Applicant, in order for the step (89) to be present on both the interior and exterior of the sidewall, the step must be located at position between the top and bottom of the sidewall of Buchalski. Accordingly, the only plausible interpretation of the location of the step (89) is illustrated in the cross sectional schematic view provided above, in which the step (89) is spaced vertically below the hinge (120a), so as to be present on both the interior and exterior surfaces of the sidewall. Consequently, the step as specified by Buchalski can not be integrally connected to the flaps, as claimed, since the step (89) is necessarily spaced from the hinge.

Further, Buchalski explicitly states in column 5, lines 39-41, that “the external portions of the step 89 of an inner nested container rests on the living hinges of the outer nested container”. Therefore, and as best understood by Applicant, the step (89) must be configured as illustrated in the cross sectional view provided above, wherein the step is spaced from the hinge so as to provide a nesting feature, which “rests on” the hinge of an outer container. Accordingly, and in

direct contrast with the pending claims, the flaps of Bulchalski are not “integrally connected” to the step along the living hinges as claimed in independent claims 1, 15, and 29.

As acknowledged by the Examiner, neither Oman nor Suh even disclose or suggest a container having a rim feature. Accordingly, none of the prior art cited, whether considered separately or in combination, disclose or suggest each and every feature of independent claims 1, 15 and 29. As such, Applicant respectfully submits that claims 1, 15 and 29 are allowable over the prior art of record. Accordingly, Applicant respectfully requests that the rejection to claims 1, 15 and 29 be withdrawn.

Moreover, dependent claims 2-14, 16-28, and 30-34 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, claims 2-8, 16-23, 30-32 recite features of the flaps, while claims 9-14, 24-28, 33-34 recite features of the container. At least for these reasons, dependent claims 2-14, 16-28, and 30-34 are further allowable over the prior art relied upon by the Examiner.

Request for Withdrawal of Finality of Rejection

If the Examiner believes that entry of the Request for Reconsideration is not appropriate at this time, Applicant respectfully petitions for a withdrawal of the finality of the present final Office Action. Applicant considers the finality of the present Final Office Action to be improper because (i) Applicant requested a formal interview in Applicant's Response filed on April 25, 2006 to the Office Action mailed on January 25, 2006, which Office Action was the first complete Office Action in the present application, and (ii) MPEP § 713.01 provides that “[w]here the reply to a first complete action includes a request for an interview, . . . the examiner, as soon as he or she has considered the effect of the reply, should grant such request if it appears that the interview would result in expediting the case to a final action” (MPEP § 713.01, III). If such an interview had been timely granted, then the Request for Reconsideration submitted herewith would have been entered prior to the present final Office Action.

Formal Request for Interview

As stated above, a formal request for an interview was previously requested. Applicant hereby submits that the present application is in condition for allowance at least for the reasons set forth herein. If the present application is not considered to be in condition for allowance by

the Examiner, and pursuant to M.P.E.P. § 713.09, Applicant again requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney Daniel Hulseberg may be reached at telephone number (212) 408-2594 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

CONCLUSION

Applicant submits that this Request for Reconsideration does not raise new issues for consideration or necessitate the undertaking of any additional search of the art by the Examiner. This Request for Reconsideration should therefore allow for immediate action by the Examiner.

Applicant also submits that entry of this Request for Reconsideration and the accompanying remarks would place the present application in better form for appeal, should the Examiner dispute the patentability of any of the pending claims.

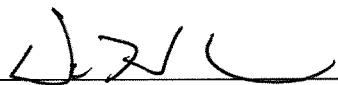
On the basis of the foregoing Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that this Request for Reconsideration be entered by the Examiner and the rejections of the pending claims be withdrawn.

The Examiner is invited to contact the undersigned at (212) 408-2594 if any additional information or assistance is required.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077409.0513. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above or in the attached petition, Applicant requests such extension and authorizes the charging of the extension fee to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077409.0513.

Respectfully submitted,

11/20/06
Date


Daniel J. Hulseberg (Reg. No. 36,554)

Baker Botts L.L.P.
CUSTOMER NO. 28763
(212) 408-2500